

Notice of Allowability

Application No.

10/791,976

Examiner

Karin M. Reichle

Applicant(s)

GANN ET AL.

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicant's 6-26-07 communication.
2. ☒ The allowed claim(s) is/are 1,2 and 5-11.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date 7/18/06.
 - (b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☒ Other See Continuation Sheet.

Continuation of Attachment(s) 9. Other: six pages of proposed and approved drawings.

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

2. Authorization for this examiner's amendment was given in a telephone interview with Mr. James Oehlenschlager on September 20, 2007.

3. The application has been amended as follows:

In the Specification,

on page 2, the last paragraph, lines 2-6: delete "In another...end of the tampon.";

on page 3, line 22: change "cut out...axis" to --cross section view of the tampon holder tube along line 2-2 of Figure 1a in combination with a plunger--;

on page 7, line 7; after "view of the", insert --the product from adjacent--;

on page 7, lines 14-15: delete "which...cut out".

on page 9, line 1 replace the paragraph thereat with the following paragraph:

Figure 6 is an alternative embodiment of a feminine hygiene product 50'. The regions of rupture [[18]] 18', 18'' are shown. Figure 7a is a partial view 35 of Figure 6 showing the regions of rupture [[18]] 18', 18''. Figure 7b is an alternative embodiment of [[the]] a feminine hygiene product 50''. The regions of rupture 18''' are shown. Also, the plunger 13 is shown. Figure 7c shows an alternative embodiment of feminine hygiene product 50''' partially-expelling tampon

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14. A portion of the feminine hygiene product 50''' comprises a rupturable membranous cap 16 comprising a projection[[s]] 30 and a hinge 39. The regions of rupture 18 [[may]] allowed a portion of the rupturable membranous cap 16 and a portion of the tampon holder tube 19 to separate.

on page 16, fifth line from the bottom: change "18" to --18'''--;

on page 17, lines 1 and 2: change "18" (each) to --18', 18'--;

on page 17, line 3: change "18" to --18', 18'', respectively,--;

on page 19, second to last paragraph, lines 3-4: change "although...16, the" to --while a projection 30 is located at the end of the rupturable membranous cap 16, --.

Claims 1-2 and 5-11 are allowed.

Claims 2-3 and 12 were cancelled.

4. The drawings were received on 4-2-07. These drawings are approved. However see following paragraph.

5. The following changes to the drawings have been approved by the examiner and agreed upon by applicant: see the attached six sheets of Figures showing changes to 4-2-07 drawings. In order to avoid abandonment of the application, applicant must make these above agreed upon drawing changes.

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6. The following is an examiner's statement of reasons for allowance: Claim 1 requires a "feminine hygiene product", see page 4, lines 9-10 of the instant specification, comprising:

a) a "tampon", see page 5, lines 21-23 of the instant specification, comprising an outer tampon perimeter, a withdrawal end opposed to an insertion end, the insertion end comprising a top portion, and

b) a tampon applicator comprising a "rupturable membranous cap", see page 4, line 24- page 5, line 6 and page 5, lines 13-14 of the instant specification, permanently associated with a "tampon holder tube", see page 4, lines 15-16 of the instant specification (i.e. "Associated" as defined by the dictionary, i.e. Applicant did not specifically define this term, means "to bring into company with one another, join in a relationship" and therefore, a cap "permanently associated" with the tube interpreted in light of this definition, and page 5, lines 5-6 and 15-20 and page 11, lines 7-10 of the instant specification is deemed to require permanent joining or attaching, directly or indirectly, of the cap with the tube),

the tampon holder tube comprising a hollow interior portion, an interior surface, an exterior surface, an outer perimeter, a longitudinal axis, a first end dimensioned for insertion into the vaginal cavity, and a second end positioned oppositely to the first end,

the tampon being housed in the tampon holder tube within said hollow interior portion of the tampon holder tube and substantially aligned with the longitudinal axis of the tampon holder tube in a "pre-expelled position", see page 6, lines 1-8 of the instant specification (since the terminology "substantially aligned" has not been specifically defined and "aligned" is defined by the dictionary as "to arrange in a line", the claim language "said tampon..,

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substantially aligned with said longitudinal axis of said...tube in a pre-expelled position" is interpreted to require the tampon from its insertion end to its withdrawal end being arranged substantially parallel to the longitudinal axis of the tube in the "pre-expelled position"),

the rupturable membranous cap covering at least a portion of the insertion end of the tampon, whereby during "expulsion" of the tampon from the tampon holder tube, see page 4, lines 26-28, page 5, lines 24-27 and page 6, lines 4-8 of the instant specification, the tampon contacts the rupturable membranous cap, thereby reorienting the tampon (i.e. since "contact" is defined by the dictionary as "touching", such claim language is interpreted to require some portion of the tampon touching the cap to reorient the tampon) into a direction substantially non-aligned to the longitudinal axis of the tampon holder tube (since the terminology "substantially aligned" , already discussed supra, and "substantially non-aligned" has not been specifically defined and "aligned" is defined by the dictionary as "to arrange in a line", the claim language "said tampon..., substantially aligned with said longitudinal axis of said...tube in a pre-expelled position" supra and "during expulsion...reorienting...non-aligned...tube" is interpreted to require the tampon from its insertion end to its withdrawal end being arranged substantially parallel to the longitudinal axis of the tube in the pre-expelled position but sometime during expulsion from the tube the tampon from its insertion end to its withdrawal end being substantially reoriented to not be in line with such axis by contact with membrane). The prior art, alone or in any combination, does not explicitly teach a cap in combination with the other claimed structure which performs the function set forth in the last section nor presents sufficient factual evidence for one to conclude that the structure taught thereby would inherently or necessarily and inevitably perform such function. Specifically while the prior art teach reorientation of a

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tampon, e.g. expansion thereof, upon expulsion, it does not teach an axis as discussed supra which is, would inherently or necessarily and inevitably be realigned as discussed supra due to contact with a cap as claimed during expulsion.

The claim language of the dependent claims is also interpreted in light of the definitions set forth on page 5, lines 8-9, and 13 et seq.


Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
September 19, 2007

Diana Lynne Gann et al. Serial No. 10/791,976
"Tampon Applicator Having a Rupturable Membranous
Cap"

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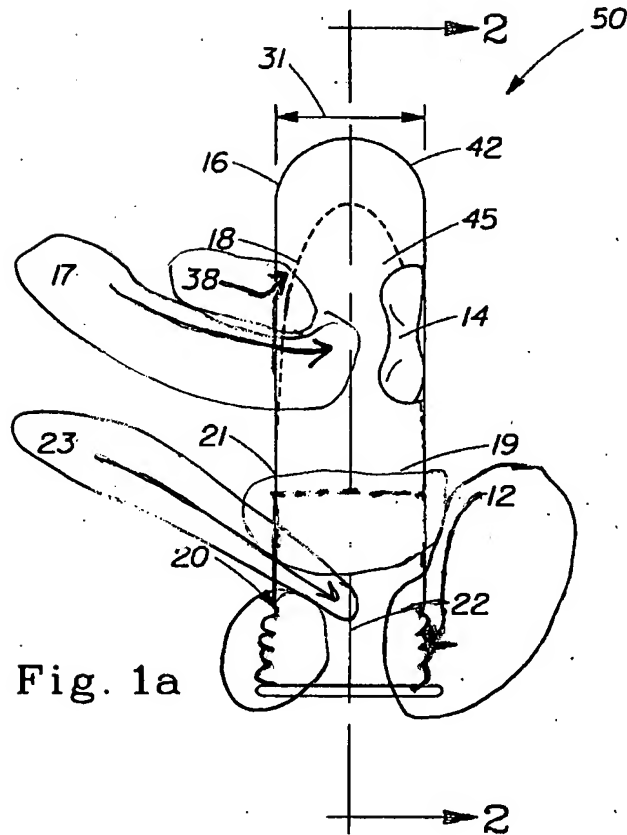


Fig. 1a

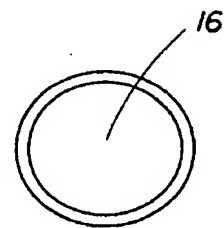


Fig. 1b

Diana Lynne Gann et al. Serial No. 10/791,976
"Tampon Applicator Having a Rupturable Membranous
Cap"

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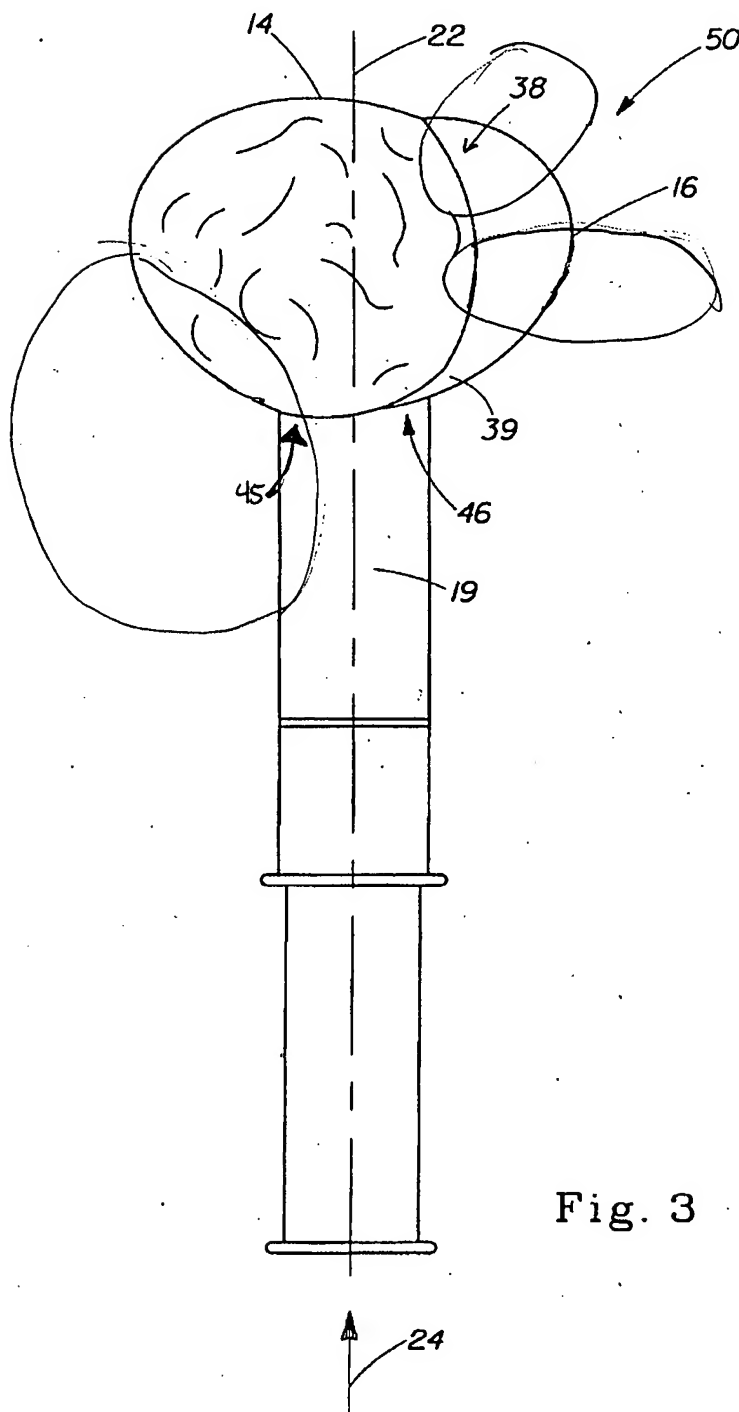
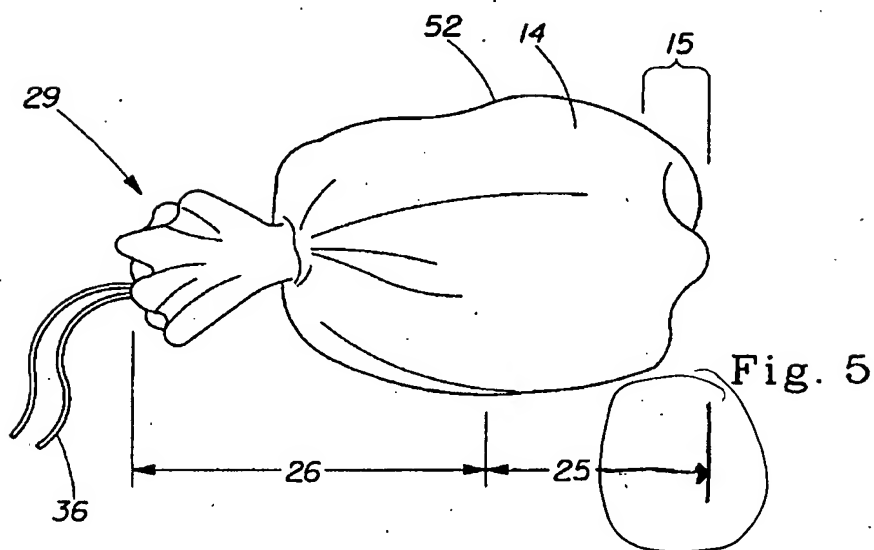
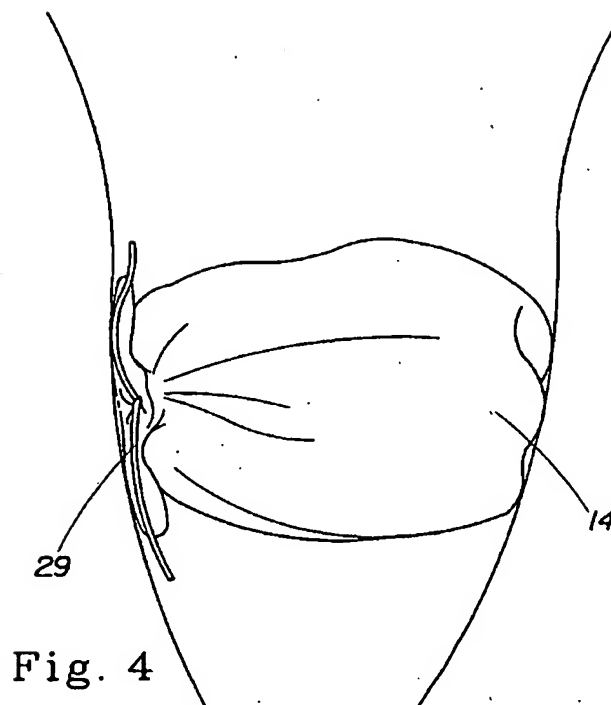


Fig. 3

Diana Lynne Gann et al. Serial No. 10/791,976
"Tampon Applicator Having a Rupturable Membranous
Cap"

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Diana Lynne Garm et al. Serial No. 10/791,976
"Tampon Applicator Having a Rupturable Membranous
Cap"

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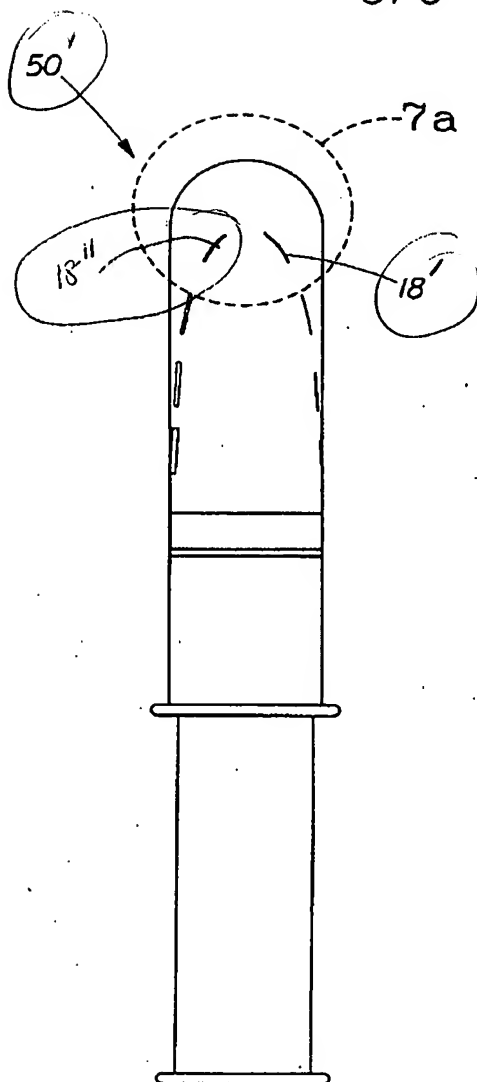


Fig. 6

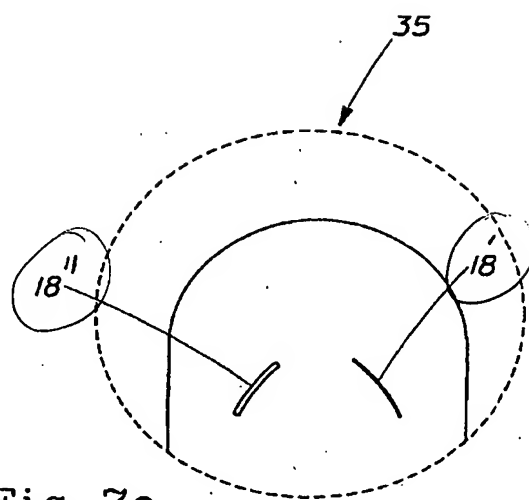


Fig. 7a

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"Tampon Applicator Having a Rupturable Membranous
Cap"

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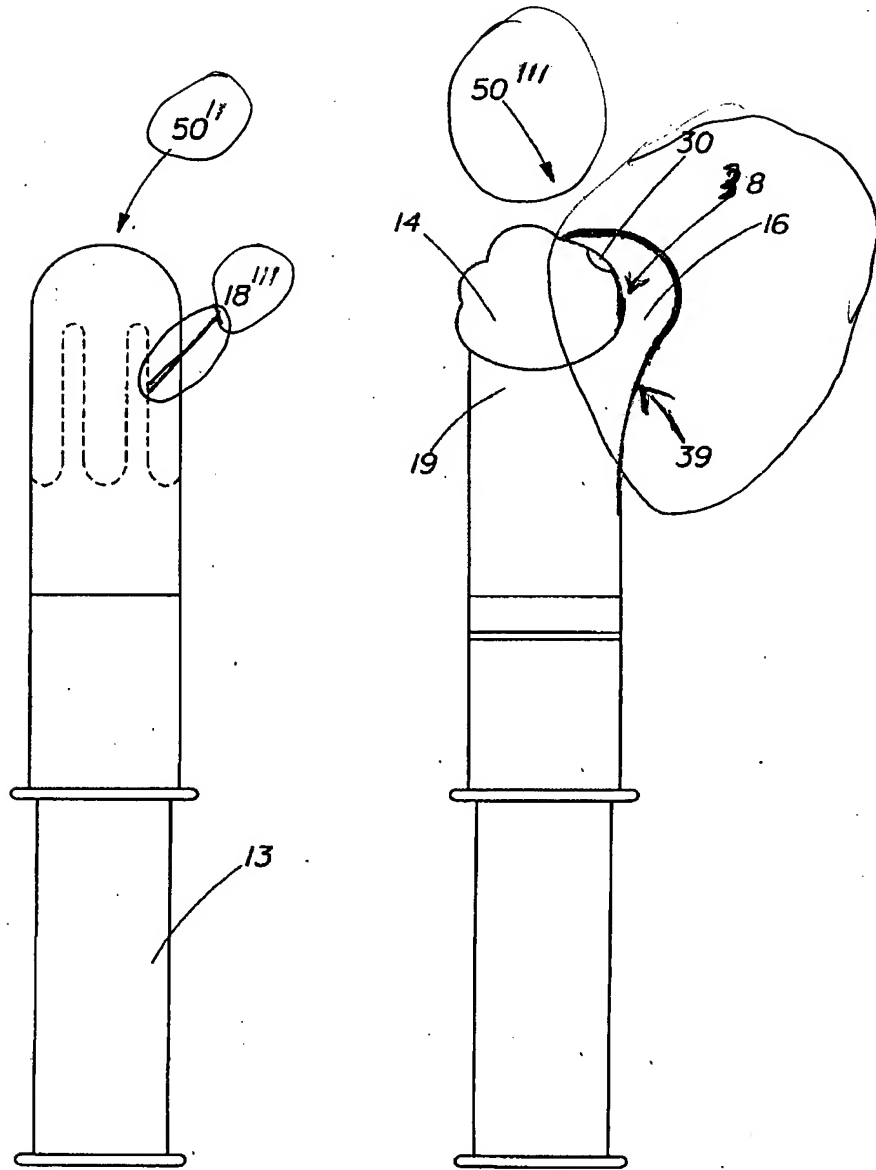


Fig. 7b

Fig. 7c